

REMARKS

The last Office Action of December 15, 2005 has been carefully considered. Reconsideration of the instant application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-21 are presented for examination. Claims 1, 3 and 11 have been canceled. Claims 2, 4-10, 12-13, 19-21 have been amended. Claims 22-27 have been added. The claim surcharge of \$350.00 for submitting one further independent claim in excess of three and three further dependent claims in excess of twenty is enclosed. No amendment to the specification has been made.

It is noted that claims 1-21 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11, 20, and 21 stand rejected under 35 U.S.C. §102(b) as being anticipated by WO 01/52003.

Claims 1, 2 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. Appl. Publ. No. 2001/0003527 to Shinohara et al. in view of U.S. Pat. No. 4,196,311 to Hoven.

Claims 3, 6, and 7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Shinohara et al. in view of Hoven and further in view of an article by Finnila.

Claims 4 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Shinohara et al. in view of Hoven, in view of Finnila and further in view of U.S. Pat. Appl. Publ. No. 2002/0036791 to Murphy.

Claim 12 stands rejected under 35 U.S.C. §103(a) as being unpatentable over WO 01/52003 in view of Shinohara et al.

Claims 13, 16 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over WO 01/52003 in view of Finnila.

Claims 14 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over WO 01/52003 in view of Finnila, and further in view of Murphy.

It is noted with appreciation that claims 5, 9, and 19 are indicated allowable if rewritten in independent form to overcome the rejection under 35 U.S.C. §112 and to include all of the limitations of the base claim and any intervening claims.

REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH

Applicant has canceled claim 1 in favor of amended claims 5, and also amended claims 9, 19, 20, and 21 to address the §112 rejection. These changes are self-explanatory and cosmetic in nature and should not be considered as a narrowing amendment to trigger prosecution history estoppel.

Withdrawal of the rejection of the claims 1-21 under 35 U.S.C. §112, second paragraph is thus respectfully requested.

REJECTION UNDER 35 U.S.C. §§102(b) AND 103(a)

Applicant has rewritten original claims 5, 9 and 19 in independent form, as suggested by the Examiner, who indicated that originally filed claims 5, 9 and 19 would be allowable if rewritten in independent form and addressing the §112, 2nd para. rejection. Accordingly, applicant asserts that claims 5, 9, and 19 have not been narrowed to trigger prosecution history estoppel. See *Salazar v. Procter & Gamble Co.*, 75 USPQ2d, 1369 (stating that introducing claim 7 based on the allowable subject matter of dependent claim 3 of the “149 application was not a narrowing amendment for purposes of patentability and, therefore, does not by itself give rise to prosecution history estoppel).

Claims 2, 4, 6-8, 10, 12, and 13 have been amended to change their dependency. Claims 22 and 23 have been added and set forth the subject matter of original claim 2. Claims 24-27, which depend from amended claim 9, have been added and set forth the subject matter of original claims 4 and 6-8.

Claims 20 and 21 have been amended to include the subject matter of original claim 19, indicated allowable.

For the reasons set forth above, it is applicant's contention that none of the cited references, taken alone or in any combination, teaches or suggests the features of the present invention, as recited in independent claims 5, 9, 19-21.

As for the rejection of the retained dependent claims, these claims depend on claims 5 and 19, share their presumably allowable features, and therefore it is respectfully submitted that these claims should also be allowed.

Withdrawal of the rejection under 35 U.S.C. §§102(b) and 103(a) and allowance of claims 2, 4-10, 12-27 are thus respectfully requested.

CONCLUSION

In view of the above presented remarks and amendments, it is respectfully submitted that all claims on file should be considered patentably differentiated over the art and should be allowed.

Reconsideration and allowance of the present application are respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

By: 

Henry M. Feiereisen
Agent For Applicant
Reg. No: 31,084

Date: March 7, 2006
350 Fifth Avenue, Suite 4714
New York, N.Y. 10118
(212)244-5500
HMF/WS:af